Film and Television Errors & Omissions Insurance

Film and Television 0923

Policy Wording

Film and Television Errors & Omissions Insurance

Definitions

Additional Insured

including but not limited to purchasers, distributors, co-producers, exhibitors, licensees or financiers.

Advertising

means advertising, publicity, or promotion of the **Named production activities**.

Assumed under contract

means liability assumed by the **Insured** in the form of hold harmless or indemnity agreements executed with any party, but only in respect of the types of **Claims** specified in Insuring Clause 1.

Circumstance

means any circumstance, incident, occurrence, fact, matter, act, omission, state of affairs or event which is likely to give rise to a **Claim** against the **Insured** or a claim by the **Insured** under the Policy.

Claim

means any written assertion of liability or any written demand for financial compensation or injunctive relief.

Computer system

means any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communications system, world-wide web site, internet site, intranet site, extranet site or web address(es).

Content

means:

a. written, printed, audio, electronic, visual, digital, streamed or informational content;

b. content displayed on the **Insured's** own website.

Damages

shall mean monetary relief.

Defence costs and expenses

means all reasonable costs and expenses incurred, with the **Insurer's** prior written consent, in the investigation, defence and settlement of any **Claim** first made against the **Insured** or of any **Circumstance** first notified during the **Period of insurance**. It does not include the **Insured's** own overhead costs and expenses.

Documents

means digitised data, information recorded or stored in a format for use with a computer, microcode, deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature whatsoever (excluding any bearer bonds or coupons, bank or currency notes, share certificates, stamps or other negotiable paper).

Employee

means:

a. any scriptwriter, freelancer, director, editor, photographer, production designer and any other person(s) employed by the **Insured** including those involved in training or apprenticeship;

b. any voluntary worker;

c. any locum, seasonal or temporary personnel;

d. any self-employed person or entity acting as freelance consultant

but only if such person or entity is working under the **Insured's** direction, control and supervision.

Excess

means the first amount paid in respect of each **Claim** as stated in the **Schedule** and is payable in respect of **Defence costs and expenses**. The **Indemnity limit** is additional to the **Excess**.

Financially associated person or entity

means:

a. any business controlled or managed by the **Insured** or in which the **Insured** has an executive interest;

b. any company in which the **Insured** directly or indirectly owns or controls more than 15% of the issued share capital;

c. any person having an executive or managerial role in the **Insured** or who would be considered to be a shadow director of the **Insured**;

d. any company that directly or indirectly owns or controls any of the issued share capital of the **Insured** or any of whose issued share capital is directly or indirectly owned or controlled by any other company or person who directly or indirectly owns or controls any of the issued share capital of the **Insured**.

Indemnity limit

means the maximum payable by the **Insurer** for each **Claim** in respect of **Damages** and claimant's costs and **Defence costs and expenses** as stated in the **Schedule** provided always that the **Insurer's** total liability to pay **Damages** and claimant's costs and **Defence costs and expenses** shall not exceed in all cases the sum stated in the **Schedule** in the aggregate for all C**laims** first made during the **Period of Insurance.**

If more than one person is entitled to an indemnity under the terms of this Policy then the **Insurer's** total liability to all such persons shall not exceed the **Indemnity limit**.

Insured

means any person or firm stated in the **Schedule** and includes:

a. any of their subsidiary companies that are in existence at the inception of this Policy and have been declared to **Insurers**;

b. the current or previous partners, directors, principals, members or **Employees** of any firm or company stated in the **Schedule**;

c. any other person who becomes a partner, director, principal, member or **Employee** of any firm or company stated in the **Schedule**.

Insurer

means HCC International Insurance Company PLC.

Jurisdiction

means the jurisdiction stated in the **Schedule**. Where no jurisdiction is stated in the **Schedule** then the **Jurisdiction** shall be Worldwide but excluding the United States of America (including its territories and /or possessions) and Canada.

Named production(s)

means the production(s) named in the **Schedule** or by endorsement

Named production activities

means research and development, preparation, production, serialisation, syndication, **Advertising** of **Content**, release, broadcast, sole licensing, and distribution of **Named production(s)** as stated in the **Schedule**.

Period of insurance

means that as stated in the **Schedule**.

Schedule

means the document titled **Schedule** that includes the name and address of the **Insured**, the premium and other variables to this Policy (including endorsement clauses) and is incorporated in this Policy and accepted by the **Insured**.

Schedules may be reissued from time to time and each successor overrides the earlier **Schedule**.

Virus

means any unauthorised executable code uploaded to, or replicated through, a **Computer system** or network whether termed a virus or known by any other name and whether it is self-replicating or non-replicating which causes damage or loss to data or the **Computer system**.

Insuring Clauses

In consideration of the premium having been paid the **Insured** is indemnified for any **Claim** arising out of any **Content** forming part of the **Named production activities** as follows:

1. Indemnity

Up to the **Indemnity limit** for **Claims** first made against the **Insured** during the **Period of insurance** for which the **Insured** is legally liable or where the **Insured** has a liability **Assumed under contract** to pay **Damages** and claimant's costs and expenses together with **Defence costs and expenses** in consequence of:

a. Defamation or other tort related to disparagement of character, harm to reputation or feelings of any person or organisation including libel, slander or defamation, product disparagement and malicious falsehood, trade libel, or any **Claim** relating to outrage or emotional distress;

b. Unintentional breach of confidentiality or other invasion, infringement or interference with rights of privacy or publicity including false light, intrusion upon a person's seclusion and the public disclosure of private facts;

c. Unintentional infringement of copyright, title, slogan, trademark, trade dress, service mark, misappropriation of ideas, formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material or artwork, passing off and plagiarism and commercial appropriation of name or likeness;

d. Misuse of any information which is either confidential or subject to statutory restrictions;

e. Unintentional disclosure of a trade secret but only in respect of a disclosure to the public in any **Content** relating to any **Named production**;

f. Unintentional failure to give credit or attribution of authorship in accordance with any agreement to which the **Insured** is a bound signatory;

g. Unintentional breach of a license to use a third party's trademarked or copyrighted material but only to the extent that use exceeds the express limitations in the license regarding territory, duration or media in which the material may be used and only when made as a part of a **Claim** under c) above;

h. Any negligent act, negligent error, negligent omission or negligent misstatement in any **Content** relating to any **Named production**.

2. Dishonesty of employees

arising out of any **Claims** first made against the **Insured** during the **Period of insurance** for which the **Insured** is legally liable to pay **Damages** and claimant's costs and expenses together with **Defence costs and expenses** and arising out of the **Named production activities**, in consequence of the dishonest, fraudulent or malicious act or omission of any former or present **Employee** (which term, for the purpose of this clause alone, shall not include any principal, partner, member or director of the **Insured**) provided that no indemnity shall be given under this Policy:

a. in the event that any principal, partner, member or director of the **Insured** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission and

b. unless such **Claim** is made in conjunction with a covered **Claim** under Insuring Clause 1

The **Insurer's** total liability to indemnify the **Insured** under these Insuring Clauses shall not exceed the sum stated in the **Schedule** regardless of the number of Insuring Clauses that it or they might relate to.

3. Claims against Additional Insureds

The **Insurer** will indemnify the **Additional Insured** up to the **Indemnity limit** for sums which they are legally liable to pay as a result of a **Claim** being made against the A**dditional Insured** arising from any **Content** supplied by the **Insured** that forms part of the **Named Production** during the **Period of Insurance** but only if an **indemnity** would have been provided under Insuring Clause 1 had the **claim** been brought directly against the **Insured(s)** and where the **Insured** has contracted in writing to indemnify the **Additional Insured** provided that **Additional Insured:**

a. has not caused or contributed to the **Claim**;

b. has not admitted liability or prejudiced the defence of the **Claim**;

c. has notified the **Insured(s)** of any potential problems:

d. accepts the **Insurer** can control the investigation, defence and settlement of the **Claim**

e. gives the **Insurer** the information and co-operation reasonably required to investigate and deal with the **Claim**

Exclusions

The **Insurer** shall not be liable to indemnify the **Insured** against any **Claim**:

1. Adherence to legal advice

arising out of or relating directly or indirectly from any failure of the **Insured** to adhere to its own legal advice with regard to clearances or **Content** of any **Named production(s)**;

2. Asbestos

arising directly or indirectly out of or resulting from or in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity;

3. Bodily injury/property damage

for bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property unless such **Claim** arises directly from negligent publication, negligent misstatement or negligent misrepresentation contained within any data, text, sounds, images or similar **Content** that has been created, published, broadcasted or disseminated by the **Insured** as part of their **Named production activities**;

4. Claims by financially associated persons or entities

made against the **Insured** by any **Financially associated person or entity** whether alone or jointly with any other person or entity. However, this exclusion shall not apply to any **Claim** brought against such **Financially associated person or entity** by an independent third party which would, but for this exclusion, be covered by this Policy;

5. Claims or Circumstances known at inception

arising directly or indirectly from any **Claim** or **Circumstance** of which the **Insured** was, or ought reasonably to have been, aware prior to inception of this Policy, whether notified under any other insurance or not;

6. Collusion and conspiracy

arising from any alleged collusion, conspiracy, extortion or threatened violence;

7. Contractual liability

arising directly or indirectly from any breach or alleged breach of any contractual duty or duty of care owed or alleged to have been owed by the **Insured** to any third party but only to the extent that such duty is more onerous than any duty that would otherwise be implied by common law or statute. This exclusion shall not apply in respect of liability the **Insured** has **Assumed under contract**;

8. Costs and expenses incurred without prior consent

for costs and expenses incurred without the prior consent of the **Insurer**;

9. Credit card

arising directly or indirectly from any unauthorised or fraudulent use of any credit, debit, charge or store card;

10. Deliberate acts

arising directly or indirectly from any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by the **Insured**, except as covered under Insuring Clause 2;

11. Dishonesty

arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission of the **Insured** or any **Employee**, except as covered by Insuring Clause 2;

12. Employee benefit schemes / stocks and shares

arising directly or indirectly from the operation or administration of any pension or other employee benefit scheme or trust fund, or the sale or purchase or dealing in any stocks, shares or securities or the misuse of any information relating to them or the breach of any related legislation or regulation;

13. Employers Liability

arising directly or indirectly from bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any **Employee** arising out of or in the course of their employment by the **Insured**, or for any breach of any obligation owed by the **Insured** as an employer to any partner, principal, director, member or **Employee** or applicant for employment;

14. Excess

for an amount less than the **Excess.** The **Excess** shall be deducted from each and every **Claim** paid or settled under this Policy. The **Indemnity limit** is additional to the **Excess**;

15. Fines and Penalties

for penalties, fines, multiple, exemplary, liquidated or other non-compensatory **Damages** awarded other than in actions brought for libel, slander or defamation as far as they are covered by this Policy. This exclusion shall not apply to punitive, multiple or exemplary **Damages** where the law permits the **Insurer** to pay them;

16. False advertising

arising directly or indirectly from false **Advertising** or misrepresentation in **Advertising**; this exclusion shall not apply in respect of any **Claim** or portion of any **Claim** relating to the alleged unauthorised use of a third party's trademark;

17. Financial advice

arising directly or indirectly from any investment, the provision of any finance or other financial advice;

18. Geographical limits

in respect of work carried out outside the Geographical Limits stated in the **Schedule**;

19. Insolvency/bankruptcy of Insured

arising out of or relating directly or indirectly to the insolvency, liquidation, receivership or bankruptcy of the **Insured**;

20. Known defamatory statements

arising from statements, advertisements or promotions that the **Insured** knew, or ought to have known, were defamatory, false, misleading or deceptive at the time of publication;

21. Land buildings etc

arising directly or indirectly from the ownership, possession or use by or on behalf of the **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;

22. Legal action

in respect of an action for **Damages**:

a. brought outside the **Jurisdiction** (including the enforcement within the **Jurisdiction** of a judgment or finding of another court or tribunal that is not within the **Jurisdiction**);

b. in which it is contended that the governing law is outside the **Jurisdiction**;

c. brought outside the **Jurisdiction** to enforce a judgment or finding of a court or other tribunal in any other jurisdiction;

Legislation and regulation

d. arising directly or indirectly from the breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation including but not limited to:

e. the Employment Retirement Income Security Act 1974, Public Law 93-496, commonly referred to as the Pension Reform act of 1974, and amendments thereto, or similar provisions of any Federal State or Local Statutory Law or Common Law;

f. the Racketeer Influenced and Corrupt Organisations Act, 18 USC Sections 1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder;

g. the Securities Act of 1933, the Securities Exchange Act 1934 or any similar Federal or State Law or any Common Law relating thereto;

h. the CAN-SPAM Act of 2003 or any subsequent amendments to that Act;

i. the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act;

j. any other law, regulation or statute relating to unsolicited communications, distributions, sending or transmitting of any communication via telephone or any other electronic or telecommunications device;

23. License payments

arising directly or indirectly from any payment owed to a licensor under a license. However, this exclusion will not apply to any covered portion(s) of any copyright and/or trademark **Claim** that results in a damage award that is measured by the amount a claimant would have received had the **Insured** paid for a license to use the claimant's infringed work and/or mark;

24. Loss, damage or destruction of bearer bonds or coupons

arising from the loss, damage or destruction of any bearer bonds, coupons, bank or currency notes, share certificates, stamps or other negotiable paper;

25. Merchandising

arising from any merchandising in any form unless agreed by the **Insurer**;

26. Negatives, Film, Prints and Electrical Media

arising from damage to or loss or destruction of negatives, exposed or unexposed film, prints, library stock or magnetic or electrical media unless they have been duplicated where such duplicate can be used to restore them to their original state;

27. Obscenity

arising directly or indirectly from any obscenity, blasphemy or pornographic material;

28. Official action or investigation

arising from any official action or investigation by or decision or order of any public, local or government body or authority;

29. Other appointments

made against any **Insured** in the capacity as:

a. director or officer of the **Insured** or of any other company or arising out of the management of the **Insured** or of any other company; or

b. trustees of any trust or as officer or employee of any pension fund or any other employee benefit scheme, whether for the benefit of members or **Employees** of the **Insured** or otherwise;

30. Other insurance

in respect of which the **Insured** is, or but for the existence of this Policy would be entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable under such other insurance;

31. Ownership and rights

arising out of any **Claim** made by any former, present or prospective **Employee**, partner, joint venturer, co-venturer, officer or director of the **Insured** or any of the **Insured's** sub-contractors or suppliers, but only in respect of **Claims** involving disputes over the ownership or exercise of rights in the material or services supplied by or to the **Insured**;

32. Patents

notwithstanding Insuring Clause 1c), arising directly or indirectly from the infringement of any patent;

33. Products

arising out of or relating to goods or products sold, supplied, recalled, repaired, altered, treated, manufactured, constructed, installed or maintained by the **Insured** or agent of the **Insured**;

34. Products harmful to health

arising directly or indirectly from any product that contains tobacco, nicotine, alcohol or any pharmaceutical product or any other product which is or becomes harmful, dangerous or hazardous in any way to the health of any person, animal or plant;

35. Radioactive contamination or explosive nuclear assemblies

directly or indirectly caused by or contributed to by or arising from:

a. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

36. Recovery of profits and royalties

arising from any **Claim** made by any writer, composer, lyricist, artist or other party under contract with the

Insured, or their heirs or assigns, seeking against the **Insured** an accounting or recovery of profits, royalties, fees or other monies claimed to be due from **Insured** or any **Claim** or suit by any such party against the **Insured** claiming excessive or unwarranted fees, compensation or other charges of any kind made by the **Insured**;

37. Results of competitions

arising from the outcome or operation of any competition, game, contest, promotion or lottery;

38. Restricted recovery rights

where the **Insured's** right of recovery from any third party in respect of that **Claim** has been restricted by the terms of any contract entered into by the **Insured**;

39. Seepage and pollution

based upon, arising out of or relating directly or indirectly to, in consequence of or in any way involving seepage, pollution or contamination of any kind;

40. Soundtrack

arising from any soundtrack album, compact disc or digital compilation unless otherwise agreed by the **Insurer**;

41. Takeover or merger

arising directly or indirectly by reason of acts, errors or omissions committed by the **Insured** after the date of its merger with or acquisition by another entity unless otherwise agreed by the **Insurer**;

42. Taxes, levies or imposts

arising from taxes, levies or imposts;

43. Terrorism

arising directly or indirectly out of, happening through or in consequence of any act or acts of force or violence for political, religious or other ends directed towards the overthrowing or influencing of any government, or for the purpose of putting the public in fear by any person or persons acting alone or on behalf of or in connection with any organisation.

In the event of any dispute as to whether or not this exclusion applies the **Insured** shall have the burden of proving that this exclusion does not apply;

44. Title

arising from the title of any **Named production(s)** in the United States of America until a satisfactory Title Report and supporting legal opinion is submitted and approved by the **Insurer**;

45. Trade Secrets

notwithstanding Insuring Clause 1e arising directly or indirectly from the misappropriation of a trade secret;

46. Trading losses

arising out of :

a. any trading loss or trading liability incurred by any business managed or carried on by the **Insured** (including the loss of any client account or business);

b. loss caused by the **Insured** in consequence of a share or asset sale to any prospective purchaser, associated business, merger partner, joint venture partner or similar because of any misstatement or misrepresentation made by the **Insured**;

c. the actual or alleged over-charging or improper receipt of fees by the **Insured**;

47. Utility provider

arising out of the failure of the service provided by an internet service provider, any telecommunications provider or other utility provider;

48. Virus

arising directly or indirectly from any **Virus**;

49. War

arising directly or indirectly out of, happening through or in consequence of, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Notification And Claims Conditions

1. Claim/Circumstance Notification

As conditions precedent to their right to be indemnified under this Policy the **Insured**:

1.1 shall inform the **Insurer** as soon as possible and in any event within 28 days of the receipt, awareness or discovery during the **Period of insurance** of:

a. any **Claim** made against them;

b. any notice of intention to make a **Claim** against them;

c. any **Circumstance**;

d. the discovery of reasonable cause for suspicion of dishonesty or fraud

provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance** unless the **Insured** is prevented from doing so by virtue of such **Circumstance** coming to their attention immediately prior to the expiry of the **Period of insurance**, in which case the **Insurer** will allow the timeframe stated above to extend beyond the expiry of the **Period of insurance**, but for the avoidance of doubt the extended timeframe shall not exceed 28 days from the end of the **Period of insurance.**

Such notice having been given as required in b), c) or d) above, any subsequent **Claim** made shall be deemed to have been made during the **Period of insurance**;

1.2 shall not, in respect of any of the matters specified in 1.1a) to 1.1d) above, admit liability, make any offer for or settle any **Claim**, or incur any costs or expenses in connection with any such **Claim** or **Circumstance**, without the prior written consent of the **Insurer**; and

1.3 shall, as soon as practicable given the circumstances, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any such **Claim** or relating to the recovery or subrogation process of any settled **Claim**;

1.4 shall, not destroy evidence, supporting information or documentation without the I**nsurer's** prior consent; nor destroy any plant or other property relating to a **Claim** under this Policy;

Every letter of **Claim**, writ, summons or process and all documents relating thereto and any other written notification of **Claim** shall be forwarded, unanswered, to the **Insurer** immediately they are received. The **Insured** shall at all times, in addition to their obligations set out above, afford such information to and co-operate with the **Insurer** to allow the **Insurer** to be able to comply with such relevant Practice Directions and Pre-Action Protocols as may be issued and approved from time to time by the Head of Civil Justice.

2. Notifications

Any and all notifications of **Circumstances** and claims for an indemnity pursuant to the policy of insurance shall be notified to HCC International Insurance Company PLC by either (a) email (b) telephone or (c) first class post.

If by email then such must be addressed to PI Claims and sent to piclaims@tmhcc.com

If by telephone, please dial the following number and ask for a PI claims underwriter:

Telephone- +44 (0)20 7702 4700

If by post:

PI Claims HCC International Insurance Company PLC
The St Botolph Building, 138-139 Houndsditch,
London, EC3A 7BT

3. Conduct of Claims

3.1 Following notification under condition 1 above the **Insurer** shall be entitled at its own expense to take over and within its sole discretion to conduct in the name of the **Insured** the defence and settlement of any such **Claim**.

Nevertheless neither the **Insured** nor the **Insurer** shall be required to contest any legal proceedings unless a King's Counsel (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such proceedings should be contested.

3.2 The **Insurer** may at any time in connection with any **Claim** made, pay to the **Insured** the **Indemnity limit** (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the **Claim** can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the **Claim**. For the avoidance of doubt the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which any such payment is made.

3.3 The **Insured** shall pay the relevant **Excess** and **Insurers** shall only make a payment under this Policy after the applicable **Excess** has been fully paid other than in relation to a payment being made under 3.2 above.

3.4 The **Insurer** shall be subrogated to the **Insured's** rights of recovery against any third party (ies) and the **Insured** shall co-operate and do whatever is necessary to secure such rights. If the **Insured** does not comply with this condition the **Insurer** may deduct any associated additional costs from any payments made under the Policy.

3.5 Duty to defend

The **Insurer** has the right and duty to defend the **Insured** against any **Claim** which is covered in its entirety. If the **Insurer** thinks it necessary the **Insurer** will appoint an adjuster, solicitor or any other appropriate person to deal with the **Claim**. The **Insurer** may appoint the **Insured's** own solicitor but only on a similar fee basis to that offered by the **Insurer's** solicitor and only for work done with the **Insurer's** prior written approval.

If a **Claim** which is only partially covered is made against the **Insured**, The **Insurer** has the right and duty to defend the **Insured** with payments for defence costs incurred in relation to any uninsured **Claim** being deducted from the **Insurer's** contribution to any final damages settlement. Irrespective of whether or not the **Insurer** makes any final damages settlement, the **Insured** is liable to re-imburse the **Insurer** for defence costs incurred in relation to any uninsured portion of any **Claim.** The defence costs incurred will be reviewed in their entirety and an appropriate allocation should be made between the covered and non-covered defence costs incurred. It is agreed that both the **Insurer** and **Insured** will use best efforts to determine a fair allocation of covered and non-covered defence costs proportions of a **Claim**. If a fair allocation cannot be agreed the **Insurer** and the **Insured** agree to follow the dispute resolution process in General Condition 7.

The **Insurer** has no duty to defend the **Insured** against **Claims** where:

a. no portion of the **Claim** is covered; or

b. the **Insurer** pays the **indemnity limit** under **Claims** condition 3.2 above; or

c. the **Claim** is for less than the **Excess**.

General Conditions

1. Cancellation

This Policy may be cancelled by or on behalf of the **Insurer** by fourteen days notice given in writing to the **Insured**.

2. Dishonest or Fraudulent Act or Omission

In the event of a loss or **Claim** which involves the dishonest, fraudulent or malicious act or omission of any former or present **Employee** the **Insured** shall take all reasonable action (including legal proceedings) to obtain reimbursement from the **Employee** concerned (and from any **Employee** who may have conspired to commit or have condoned such act or omission) or from the estate or legal representatives of such **Employee**. Any monies which but for such dishonest, fraudulent or malicious act or omission would be due to such **Employee** from the **Insured** or any monies held by the **Insured** for such **Employee** shall be deducted from any amount payable under this Policy.

3. Fraudulent Claims

If the **Insured** shall make any claim knowing the same to be fraudulent or false as regards the amount or otherwise (including the provision of false or fraudulent documents or statements) then the **Insurer** will:

i. refuse to pay the whole of the claim; and

ii. recover from the **Insured** any sums that it has already paid in respect of the claim.

The **Insurer** may also notify the **Insured** that it will be treating (all sections of) this policy as having terminated with effect from the date of the earliest of any of the fraudulent act. In that event the **Insured** will:

a. have no cover under the Policy from the date of termination; and

b. not be entitled to any refund of premium.

4. Invalidity

If any provision of this Policy is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable this will not affect the other provisions of this Policy which will remain in full force and effect.

5. Notices

Notice shall be deemed to be duly received in the course of post if sent by pre-paid letter post properly addressed to:

a. in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker;

b. in the case of the **Insurer**, to HCC International Insurance Company PLC at The St Botolph Building, 138-139 Houndsditch, London, EC3A 7BT.

6. Other parties

The **Insured** and the **Insurer** are the only parties to this contract and no other person has any rights to enforce any term of this Policy.

7. Policy construction and disputes

Any phrase or word in this Policy and the **Schedule** will be interpreted in accordance with the laws of England and Wales. The Policy and the **Schedule** shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the **Schedule** shall bear such specific meaning wherever it may appear. Any dispute concerning the interpretation of the terms, conditions or exclusions contained herein is understood and agreed by both the **Insured** and the **Insurer** to be subject to the laws ofEngland and Wales. Each party agrees to refer any such dispute to a mediator to be agreed between the **Insured** and the **Insurer** within 14 working days of any dispute arising under the Policy. If a mediator is not agreed then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties agree to share equally the costs of CEDR and of the mediator and that the reference of the dispute to mediation will be conducted in confidence.

The **Insured** and the **Insurer** agree to perform their respective continuing obligations under this Policy while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations. If any such dispute is not resolved by mediation or the **Insured** and the **Insurer** cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be submitted to the jurisdiction of any court of competent jurisdiction within England and Wales and each party agrees to comply with all requirements necessary to give such court jurisdiction.

8. Reasonable steps to avoid Loss

Without prejudice to the Notification and Claims Conditions in this Policy, the **Insured** shall take all reasonable steps to avoid or mitigate any loss, damage or liability that may result in any **Claim** or **Circumstance** notifiable under this Policy.

9. Subscribing Insurers

The **Insurers** obligations under this policy are several and not joint and are limited solely to the extent of their individual subscriptions. The **Insurers** are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

10. Waiver of subrogation against Employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment caused or contributed to by any act or omission of the **Employee** or former **Employee** which was dishonest, fraudulent or malicious or the **Employee** or former **Employee** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission.

11. International Sanctions

The **Insurer** will not provide cover, be liable to pay any **claim** or provide any benefit if to do so would expose the **Insurer** (or any parent company, direct or indirect holding company of the **Insurer**) to any penalty or restriction (including extraterritorial penalties or restrictions so far as such do not contradict laws applicable to the **Insurer**), arising out of any trade and economic sanctions laws or regulations which are applicable to it.

12. Assignment

This policy of insurance (including any benefits it confers provides) are not assignable to any third party without the express approval of the **Insurer** confirmed by way of an endorsement. in writing by the **Insurer**

13. Change of control

In the event that the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party (whether a company, corporation or any other legal entity or person) the **Insured** shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurers** may at their absolute discretion agree to continuation of the policy of insurance, to be confirmed by way of a written endorsement to the policy. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 13 – Change of control, the cover provided by this policy of insurance shall cease with immediate effect at the date of the change of control.

For the avoidance of doubt, the **Insured** shall not be entitled to an indemnity in respect of any claims made under this policy of insurance where notification of the **Claim** occurs after a change in control (as referred to in this General Condition 13 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 13

Complaints

We are dedicated to providing you with a high quality service and we want to ensure that we maintain this at all times If you feel that we have not offered you a first class service please write and tell us and we will do our best to resolve the problem If you have any questions or concerns about your policy or the handling of a claim you should in the first instance contact

Compliance Officer
Tokio Marine HCC
The St Botolph Building,
138-139 Houndsditch,
London, EC3A 7BT

The Financial Ombudsman Service (FOS)

Should you be dissatisfied with the outcome of your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service. The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. Contacting the FOS does not affect your right to take legal action.

The FOS's contact details are as follows:

Financial Ombudsman Service

Exchange Tower

London E14 9SR

Email: complaint.info@financial-ombudsman.org.uk

Telephone: +44 (0)30 0123 9123

Website: www.financial-ombudsman.org.uk

The European Commission Online Dispute Resolution Platform (ODR)

If you were sold this product online or by other electronic means and within the European Union (EU) you may refer your complaint to the EU Online Dispute Resolution (ODR) platform. Upon receipt of your complaint the ODR will escalate your complaint to your local dispute resolution service – this process is free and conducted entirely online. You can access the ODR platform on http://ec.europa.eu/odr. This platform will direct insurance complaints to the Financial Ombudsman Service. However, you may contact the FOS directly if you prefer, using the details as shown above.

Data protection notice

Tokio Marine HCC respects your right to privacy. In our Privacy Notice (available at https://www.tmhcc.com/en/legal/privacy-policy) we explain who we are, how we collect, share and use personal information about you, and how you can exercise your privacy rights. If you have any questions or concerns about our use of your personal information, then please contact DPO@tmhcc.com.

We may collect your personal information such as name, email address, postal address, telephone number, gender and date of birth. We need the personal information to enter into and perform a contract with you. We retain personal information we collect from you where we have an ongoing legitimate business need to do so.

We may disclose your personal information to:

- our group companies;
- third party services providers and partners who provide data processing services to us or who otherwise process personal information for purposes that are described in our Privacy Notice or notified to you when we collect your personal information;
- any competent law enforcement body, regulatory, government agency, court or other third party where we believe disclosure is necessary (i) as a matter of applicable law or regulation, (ii) to exercise, establish or defend our legal rights, or (iii) to protect your interests or those of any other person;
- a potential buyer (and its agents and advisers) in connection with any proposed purchase, merger or acquisition of any part of our business, provided that we inform the buyer it must use your personal information only for the purposes disclosed in our Privacy Notice; or
- any other person with your consent to the disclosure.

Your personal information may be transferred to, and processed in, countries other than the country in which you are resident. These countries may have data protection laws that are different to the laws of your country. We transfer data within the Tokio Marine group of companies by virtue of our Intra Group Data Transfer Agreement, which includes the EU Standard Contractual Clauses.

We use appropriate technical and organisational measures to protect the personal information that we collect and process about you. The measures we use are designed to provide a level of security appropriate to the risk of processing your personal information.

You are entitled to know what data is held on you and to make what is referred to as a Data Subject Access Request ('DSAR'). You are also entitled to request that your data be corrected in order that we hold accurate records. In certain circumstances, you have other data protection rights such as that of requesting deletion, objecting to processing, restricting processing and in some cases requesting portability. Further information on your rights is included in our Privacy Notice.

You can opt-out of marketing communications we send you at any time. You can exercise this right by clicking on the "unsubscribe" or "opt-out" link in the marketing e-mails we send you. Similarly, if we have collected and processed your personal information with your consent, then you can withdraw your consent at any time. Withdrawing your consent will not affect the hlawfulness of any processing we conducted prior to your withdrawal, nor will it affect processing of your personal information conducted in reliance on lawful processing grounds other than consent. You have the right to complain to a data protection authority about our collection and use of your personal information.

Contact us

Tel: +44 (0)20 7702 4700
mail@tmhcc.com

tmhcc.com